

***PROPOSED NEW REGULATION***

**Chapter 6. State Gambling Licenses and Approvals for  
Gambling Establishments, Owners, and Key Employees**

**12355. Request for Approval Regarding Security Interests and Secured  
Transactions**

- (a) No security interest described in Business and Professions Code section 19900 shall be enforceable unless the security interest is approved or exempted in accordance with Business and Professions Code sections 19900 through 19905 and regulations adopted thereunder. If and to the extent that the Bureau has not adopted regulations under section 19900 at the time a person seeks to enforce any rights with respect to a security interest, such enforcement shall require Commission prior approval.
- (b) Except as provided in subsection (e), prior approval by the Commission of all transactions resulting in the creation of a security interest granted by a licensee ("transaction") shall be sought by the licensee as follows:
- (1) At least 30 days before the proposed effective date of the transaction, the licensee shall notify the Commission in writing of the specific details of the transaction. The notification shall also include an acknowledgement of the parties' intent to comply with subsection (b)(2) of this regulation and specifically cite to page or paragraph numbers of the documents and instruments that will evidence and effectuate the transaction (the "Documents"). The notification, together with a copy of the Documents, shall be submitted to the Executive Director of the Commission.
  - (2) The Documents shall include the following acknowledgments and agreements by the parties thereto:
    - (A) Approval of the transaction by the Commission does not constitute a certification by the Commission that the Documents are enforceable in accordance with their terms and conditions and that no liability is attributable to and/or assumed by the Commission for approval, failure to approve, delay or other direct or incidental consequences of the approval process, whether foreseeable or otherwise.
    - (B) Payment or repayment of any monetary obligation arising out of or incurred in connection with the transaction shall not be calculated by reference to a percentage of the revenue, earnings, profits, or receipts of any gambling establishment that is owned, operated or controlled by the licensee.
    - (C) No interest in any gambling license issued by any city, county, city and county, or the Commission is conferred upon holder of the security interest ("Secured Creditor") by the Commission's approval.
    - (D) Neither the Secured Creditor nor any person acting on behalf of, or whose interest is derived from the Secured Creditor has any right to

1 enforce any security interest relating to the transaction without first  
2 proceeding pursuant to Business and Professions Code 19900.

3 (E) An assignment of the security interest or an amendment of the  
4 Documents requires prior approval of the Commission, as described in  
5 the Commission regulations, unless exempted by the Commission  
6 regulations.

7 (3) If the transaction is a loan related to the purchase or sale of a gambling  
8 establishment, the licensee shall submit the loan documents, as specified,  
9 with the purchase or sale agreement, as well as the proposed organizational  
10 chart of the gambling establishment under the proposed purchaser.

11 (c) **Processing Times.** The Commission review process shall be as follows:

12 (1) After receipt of the request for transaction approval, the Executive Director shall  
13 have 45 days to notify the licensee of any deficiency in the request for approval.

14 (2) Requests for transaction approvals shall be processed within 60 days after the  
15 earlier of (a) the receipt of a complete request, or (b) the receipt of the additional  
16 information requested by the Commission.

17 (3) If the licensee does not respond to the Executive Director's request to cure  
18 deficiencies within 30 days of notification, the request to approve the transaction  
19 will be deemed abandoned and no further action will be taken on it.

20 (4) If the transaction is not exempted pursuant to subsection (e), then the  
21 transaction shall be approved or denied at a noticed Commission meeting within  
22 60 days after the Executive Director has completed processing it for the  
23 Commission's consideration, unless otherwise agreed to by the licensee.

24 (d) **Subsequent Amendment or Assignment.**

25 Any amendment to the Documents and any assignment of any security interest or  
26 any portion thereof shall require the licensee's compliance with the Commission's  
27 regulations and prior approval by the Commission. No amendment to the  
28 Documents shall excuse the applicability of the Gambling Control Act, venue, or  
29 California jurisdiction in disputes involving matters covered by the Gambling Control  
30 Act or regulations adopted thereunder. If the amendment renders the transaction  
31 exempt pursuant to subsection (e)(1), or maintains the exemption pursuant to  
32 subsection (e)(1), the licensee shall so notify the Commission pursuant to  
33 subsection (f).

34 (e) **Exemptions.** No prior Commission approval of a transaction is required if:

35 (1) The Secured Creditor is one of the following:

36 (A) A licensee; provided, however, that the licensee details the source of  
37 the funds and that the exemption shall be available only for so long as  
38 the Secured Creditor remains a licensee;

39 (B) A federally regulated or state-regulated bank, savings and loan, or  
40 other federally or state regulated lending institution; or any agency of  
41 the federal, state, or local government;

- 1 (C) An insurance company that is subject to supervision by the Insurance  
2 Commissioner of California;
- 3 (D) A retirement plan established and maintained by the United States, an  
4 agency or instrumentality thereof, or by a state, its political  
5 subdivisions, or any agency or instrumentality of a state or its political  
6 subdivisions, for the benefit of its employees;
- 7 (E) An employee benefit plan within the meaning of Title I of the federal  
8 Employee Retirement Income Security Act of 1974 (29 U.S.C. sec.  
9 1001 et seq.);
- 10 (F) A securities dealer registered pursuant to the federal Securities  
11 Exchange Act of 1934 (15 U.S.C. sec. 78a et seq.); provided such  
12 dealer is not entering into the transaction in his or her individual  
13 capacity;
- 14 (G) An entity in which all of its equity owners individually meet the criteria  
15 of this subsection (e)(1); or
- 16 (H) An entity that the Commission may in its discretion decide to exempt  
17 from time to time.
- 18 (2) The transaction is unrelated to controlled gambling activities or ownership  
19 or operation of a gambling establishment,
- 20 (3) The transaction is for the lease of personal property to be used in the  
21 gambling establishment, where default on the lease enables the lessor to  
22 repossess the personal property but does not otherwise entitle the lessor to  
23 any interest in the gambling establishment or in the revenue, earnings, profits  
24 or receipts of the licensee (other than through execution of a monetary  
25 judgment), and the lease payments are not calculated by reference to a  
26 percentage of the revenue, earnings, profits, or receipts of any gambling  
27 establishment that is owned, operated or controlled by the licensee; or
- 28 (4) The transaction is a loan secured by the personal property of the  
29 licensee, where a default on the loan does not entitle the lender to any  
30 interest in the gambling establishment or in the revenue, earnings, profits or  
31 receipts of the licensee (other than through execution of a monetary  
32 judgment), and the loan payments are not calculated by reference to a  
33 percentage of the revenue, earnings, profits, or receipts of any gambling  
34 establishment that is owned, operated or controlled by the licensee.
- 35 (f) If the transaction is exempted from pre-approval under subsection (e)(1) above, the  
36 licensee shall, within 30 days of closing or funding, provide the Commission with:
- 37 (1) A summary of the transaction;
- 38 (2) A copy of the transaction notice and copies of the title and signature  
39 pages of the executed Documents; and
- 40 (3) Documentation showing that the parties to the transaction (including all  
41 wholly-owned subsidiaries) are exempted under subsection (e)(1).

- 1 (g) ***Subsequent Loss of Exemption.*** If, subsequent to the creation of any security  
2 interest that is initially exempt from the requirement of prior Commission approval,  
3 such security interest loses or is going to lose the attribute or character that  
4 rendered it exempt, then the licensee and the Secured Creditor shall each notify the  
5 Commission of that fact within 3 days of obtaining knowledge of that fact.
- 6 (h) The Bureau may conduct any investigation under the Gambling Control Act which it  
7 deems necessary with respect to the transaction and shall report any findings to the  
8 Commission.
- 9 (i) Notwithstanding the provisions of this regulation, the Commission, if it determines  
10 that a party to a transaction, including transactions in which no security interest is  
11 created, should be licensed pursuant to Business and Professions Code 19852 or  
12 19853, may require such party to apply for and obtain a license, registration, or  
13 finding of suitability before approving the transaction.

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15 **Authority:** Business and Professions Code Sections 19811, 19823, 19824, 19840, 19841, 19893, 19901,  
16 and 19951.

17 **Reference:** Business and Professions Code Sections 19852, 19853, 19901, 19902, and 19904.  
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